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T. CHRISTOPHER JOHNS; and JOHNS AND  
7 ALLYN, A.P.C.

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
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13 MICHAEL DeMARTINI and RENATE  
DeMARTINI,

14 Plaintiffs,

15 v.

16 THOMAS CHRISTOPHER JOHNS; JOHNS  
17 & ALLYN, A.P.C.; and DOES 1 TO 30,  
inclusive,,  
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19 Defendants.  
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CASE NO. 3:12-CV-03929-JCS

**DECLARATION OF THOMAS  
CHRISTOPHER JOHNS IN SUPPORT OF  
MOTION TO REOPEN CASE AND  
VACATE ARBITRATION AWARD**

Judge: Magistrate Judge Joseph C. Spero  
Date: November 21, 2014  
Time: 9:30 a.m.  
Courtroom: G

1 I, Thomas Christopher Johns, declare as follows:

2 1. I am a principal of Johns and Allyn, a Professional Corporation, a Defendant in this  
3 action and a Claimant and Respondent in bifurcated fee and malpractice arbitration proceedings  
4 before the American Arbitration Association ("AAA") in San Francisco, California. The Award  
5 issued in the malpractice arbitration proceeding (AAA Case No. 7419448513 S1M, hereinafter,  
6 "Malpractice Arbitration") is being challenged in this motion to reopen and vacate. I am also a  
7 Defendant in this action and a Respondent in the Malpractice Arbitration (together with Johns &  
8 Allyn, "Respondents"). I am a member in good standing of the Bar of the State of California and I  
9 am licensed to practice in the courts of this State, including the Northern District of California and  
10 the Ninth Circuit Court of Appeals. If called as a witness, I could and would competently testify  
11 to the facts stated herein which are based on my personal knowledge except where stated upon  
12 information and belief.

13 2. Claimants Michael and Renate DeMartini (hereinafter, "Claimants" or  
14 "DeMartinis") and Johns & Allyn entered into an Attorney-Client Fee Agreement ("Fee  
15 Agreement"). The Fee Agreement was signed by Cross-Claimant Michael DeMartini on October  
16 24, 2008. Shortly thereafter, on November 7, 2008, Cross-Claimant Renate DeMartini signed the  
17 agreement in Nevada and returned it to me by US mail. Pursuant to the Fee Agreement,  
18 Respondents agreed to provide legal services and represent Claimants in two cases pending in  
19 Marin County Superior Court (Case Nos. CIV 085234 and CIV 085235) at agreed-upon hourly  
20 rates. The Fee Agreement contains an Arbitration Provision whereby the parties agreed to submit  
21 all disputes, including any claim for legal malpractice, to binding arbitration. Claimants executed  
22 written amendments to the Fee Agreement in Nevada on July 7, 2010 and April 4, 2011 and  
23 returned them to me (the first amendment by US mail and the second one by hand delivery), but  
24 neither amendment addressed the arbitration provision and each provided that all other terms and  
25 conditions of the original Fee Agreement, except as modified by the amendments, shall remain  
26 effective. True and correct copies of the Fee Agreement and amendments thereto are attached as  
27 Exhibit 1.

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3. On October 23, 2008, six of the DeMartinis' siblings and spouses filed two complaints against Cross-Claimants in Marin County Superior Court, entitled *Timothy P. DeMartini, et al. v. Michael DeMartini, et al.* bearing Case Nos. CIV 085234 and CIV 085235: (1) a complaint for partition by sale of a family-owned property in San Anselmo, California; and (2) a complaint for preliminary and permanent injunction seeking to enjoin Cross-Claimants from spending further funds on the property. On January 5, 2009, Cross-Respondents filed a cross-complaint for partition in kind of the twenty jointly owned properties in Case No. CIV 085234 (hereinafter, the "Partition Action"). After the Marin County Superior Court denied the preliminary injunction, prosecution of the Partition Action continued.

4. Claimants were residents of Reno, Nevada at the time they entered into the Fee Agreement and amendments thereto. I am informed and believe, and on that basis, state that Claimants are still residents of the State of Nevada. Claimants sent written and email correspondence to me from Nevada, including letters from Michael instructing me how to handle certain aspects of the litigation. Although a significant portion of our communications were conducted by US mail, email and telephone (more than 500 communications), Claimants and their son Matthew DeMartini traveled to California to meet with me on numerous occasions and I also traveled to Reno, Nevada on one occasion to meet with them regarding the litigation. All bills were sent to the DeMartinis in Nevada, and check payments from banks in Nevada were generally sent to me from Nevada via US mail.

5. I am a resident of Marin County, California. Johns & Allyn is a California professional corporation with its principal place of business in Marin County, California.

6. Attached hereto as Exhibit 2 is a true and correct copy of Timothy and Margie DeMartini, *et al.*'s Mediation Brief relating to the Partition Action, dated April 12, 2010. Exhibit 2 was bated-stamped JA00985 and admitted as evidence in the Malpractice Arbitration. The remaining documents described in and attached to this declaration were admitted as evidence in the Malpractice Arbitration.

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7. Attached hereto as Exhibit 3 is a true and correct copy of Michael R. Cartwright's Mineral Business Appraisal, dated July 26, 2010 and marked and admitted as Stipulated [Trial] Exhibit 10 in the Partition Action.

8. Attached hereto as Exhibit 4 are true and correct copies of pertinent excerpts to the deposition of Michael DeMartini in the Partition Action, taken on August 24, 2010.

9. Attached hereto as Exhibit 5 is a true and correct copy of the Settlement Conference Brief of Timothy DeMartini, *et al.* filed in the Partition Action, dated August 30, 2010.

10. Attached hereto as Exhibit 6 are true and correct copies of pertinent excerpts to the reporter's transcript of pre-trial proceedings in the Partition Action, taken on April 21, 2011.

11. Attached hereto as Exhibit 7 is a true and correct copy of Michael and Renate DeMartini's Proposed Ownership Plan, dated April 25, 2011 and marked and admitted as Trial Exhibit No. 15 in the Partition Action.

12. Attached hereto as Exhibit 8 are true and correct copies of pertinent excerpts to the reporter's transcript of trial proceedings in the Partition Action, taken on April 26, 2011.

13. Attached hereto as Exhibit 9 is a true and correct copy of Michael and Renate DeMartini's Proposed Ownership Plan, dated April 27, 2011 and marked and admitted as Trial Exhibit No. 15A in the Partition Action.

14. Attached hereto as Exhibit 10 are true and correct copies of pertinent excerpts to the reporter's transcript of trial proceedings in the Partition Action, taken on April 27, 2011.

15. Attached hereto as Exhibit 11 is a true and correct copy of the alternative ownership proposal presented by David DeMartini, marked and admitted as Trial Exhibit 109 in the Partition Action.

16. Attached hereto as Exhibit 12 are true and correct copies of pertinent excerpts to the reporter's transcript of trial proceedings in the Partition Action, taken on April 29, 2011.

17. Attached hereto as Exhibit 13 is a true and correct copy of the reporter's transcript of trial proceedings in the Partition Action, taken on May 5, 2011.

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1           18. Attached hereto as Exhibit 14 is a true and correct copy of Michael DeMartini and  
 2 Renate DeMartini's Request for Modification of Tentative Decision in the Partition Action, filed  
 3 on or about May 16, 2011.

4           19. Attached hereto as Exhibit 15 is a true and correct copy of the Court's Statement of  
 5 Decision in the Partition Action, filed on or about June 20, 2011.

6           20. Attached hereto as Exhibit 16 is a true and correct copy of the Interlocutory  
 7 Judgment of Partition in the Partition Action, filed on or about June 20, 2011

8           21. Attached hereto as Exhibit 17 is a true and correct copy of Michael and Renate  
 9 DeMartini's Substitution of Attorney – Civil, filed in the Partition Action on or about June 30,  
 10 2011.

11           22. Attached hereto as Exhibit 18 are true and correct copies of pertinent excerpts to  
 12 the reporter's transcript of post-trial proceedings (*i.e.*, Motion for New Trial) in the Partition  
 13 Action, taken on August 18, 2011.

14           23. Attached hereto as Exhibit 19 is a true and correct copy of Michael J. DeMartini's  
 15 letter to me and enclosed a Statue of Limitation Tolling Agreement relating to the Partition  
 16 Action, dated on or about June 22, 2012.

17           24. Attached hereto as Exhibit 20 is a true and correct copy of Michael DeMartini and  
 18 Renate DeMartini's form complaint for malpractice against Johns & Allyn and me arising out of  
 19 legal services relating to the Partition Action, filed on or about June 27, 2012 in Marin County  
 20 Superior Court.

21           25. Attached hereto as Exhibit 21 is a true and correct copy of Michael and Renate  
 22 DeMartini's Appellants' Reply Brief stemming from the judgment in the Partition Action, filed on  
 23 or about January 15, 2013 with the Court of Appeal of the State of California, First Appellate  
 24 District, Division One.

25           26. Attached hereto as Exhibit 22 is a true and correct copy of the appellate opinion  
 26 relating to the DeMartinis' appeal from the judgment in the Partition Action issued by the Court of  
 27 Appeal of the State of California, First Appellate District, Division One, dated June 28, 2013.

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1 I declare under penalty of perjury under the laws of the state of California that the  
2 foregoing is true and correct.

3 Executed on September 4<sup>th</sup>, 2014 at San Rafael, California

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5 Thomas Christopher Johns  
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